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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1282 OF 2003

Khalil Ahmedali Ansari ... Appellant

V/s.

State of Maharashtra ... Respondent

Mr.Arfan A. Sait for Appellant
Mrs.V.R. Bhosale, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **NOVEMBER 16, 2006**

ORAL JUDGMENT (PER PALSHIKAR, J.):

. Being aggrieved by the judgment and order of conviction an sentence passed on 21.4.2003 by the II Adhoc Additional Sessions Judge, Thane, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also the arguments canvassed before us.

2. With the assistance of the learned Advocate for the accused and the learned Additional Public Prosecutor, we have reappreciated the evidence on record. The prosecution case as disclosed by reappreciation stated briefly is that the accused was staying with his brother Jamir, PW1 and his family. He was not doing any work for his livelihood and was dependent on the brother. On 21.10.2001, Jamir and his brother Shakeel went to work in the evening leaving the

wife, daughter and the accused in the house. On the next day, when they returned at about 7 in the morning, the house was found locked from outside. It was opened and in the inside the wife of Jamir was lying dead. He was assaulted. Blood was there and the child of the victim was also in the room. PW1 Jamir therefore filed a First Information Report naming the present appellant as the suspect. The police conducted the investigation, arrested the accused and he was chargesheeted. The prosecution examined 10 witnesses to prove its case and the learned trial Judge relied heavily on the testimony of PW2, a child witness, convicted the accused as aforesaid.

3. PW1, Jamir, is the complainant and brother of the accused and husband of the victim. He deposed before the Court that the murderous assault was committed by his brother. He was then crossexamined and his entire testimony is destroyed in this cross-examination. In his examination in chief, he has clearly stated as under:

> "1. ... At relevant time there was lock from outside the house. My daughter, who was inside the room gave call me. Then I broke opened the said lock of the house. I entered in the house. I noticed that my wife was lying in dead condition. I asked to my daughter who assaulted

> to my wife. My daughter told me that Khalilchacha assaulted to her by means of iron press. ....."

Then in cross-examination he said thus:

> 3. .. Before 8 days prior to the incident, I have farewell the accused for proceeding towards Burhanpur. I also informed to my father about the same and I have also asked to my father to inform me about the his arrival there. My father has informed to me that accused had come there and he is safe there. ...."

4. From the admission of PW1, it is obvious or in any case it raises a reasonable doubt regarding the presence of the accused at the scene of offence. He admits in his cross-examination that he had despatched him to Burhanpur. Then in paragraph 5 of the cross-examination, he states that while lodging the First Information Report, he did not mention therein that his daughter told him about Khalil chacha assaulting his wife. His report to the police and his allegation in Court is that he claimed that the accused was the murderer of his wife. Yet the whole basis of suspicion namely his daughter’s statement that Khalil chhacha assaulted his wife, is an omission so grievous that it destroys the truthfulness of the entire

testimony of PW1. Apart from that he goes on to say in his cross-examination thus:

> 5. ... It is correct to say that as there was murder of my wife and somebody has to be named about the same, by which I have mentioned the name of my accused in my report. ...."

5. So he admits that the name of the accused was mentioned in the First Information Report because somebody was required to be so mentioned. Then he says that the accused had been to Burhanpur 8 days prior to the day of the incident and he did not come back thereafter and yet he chose to accuse him of the murder. He then admits that the First Information Report was lodged by him against the accused due to misunderstanding and then volunteers that there is no direct nexus between the death of his wife and the act of the accused.

6. In the face of this state of evidence, no reliance can be placed on the child witness when it says that the assault was committed by Khalil, the present Appellant. If this evidence is rejected as it ought to be rejected, there is nothing later on record which could warrant conviction of the accused. The Doctor examined by the prosecution does prove that the death was homicidal but there is no connection whatever

between the homicidal death and the accused. PW1 himself says that the accused had gone to Burhanpur 8 days prior to the date of the incident. In such circumstances, we feel that the entire basis of the prosecution case is knocked off.

7. In our opinion, therefore, there is no reason to go into other pieces of evidence which even if accepted, cannot lead to the conclusion of murder by the accused.

8. In the result, the appeal succeeds and is allowed. The order of conviction and sentence is set aside. The accused is in jail. He be released forthwith, if not otherwise required in law.